

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON, DIVISION

TIMOTHY MCKIMMY, §

Plaintiffs, §

v. §

OPENSEA, §

Defendants. §

CIVIL ACTION NO. 4:22-CV-00545

AFFIDAVIT

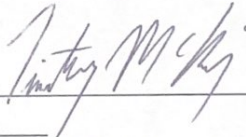
STATE OF TEXAS §
HARRIS COUNTY §

BEFORE ME, the undersigned notary, on this day personally appeared TIMOTHY MCKIMMY, the affiant, who after being duly sworn by me, under oath stated that the following is true and correct:

1. My name is Timothy McKimmy and I am over 18 years of age, of sound mind, and capable of making this affidavit.
2. I reside in the State of Texas
3. Ozone Networks, Inc. does business as OpenSea, and I have brought a case against OpenSea for knowing about security vulnerabilities in its platform, yet failing to address them, among other failures.
4. I did not sign any arbitration agreement. I did not agree to waive to waive my right to a jury trial.
5. I signed up for OpenSea on my Desktop.
6. I bought the Bored Ape from OpenSea on my Desktop using OpenSea's desktop platform.
7. When signing onto the OpenSea website, there was never any hyperlink or blue URL that prompted me to view the Terms of Service.
8. I purchased NFT Bored Ape Yacht Club No. 3475 ("Bored Ape No. 3475") and am the rightful owner.
9. On or about February 7, 2022, Bored Ape was stolen from me and then sold to another individual. I did not list my

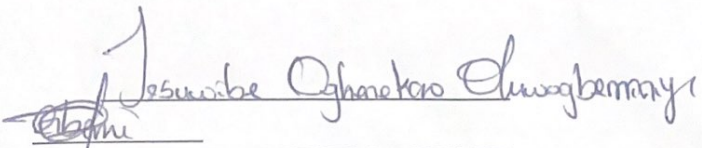
Bored Ape No. 3475 for sale, and I did not accept an offer for the Bored Ape.

10. I was in the State of Texas when the Bored Ape was stolen from me.
11. The Bored Ape was then resold at below market value.
12. I reported my stolen Bored Ape to OpenSea and the issue was never resolved. No effort was made by OpenSea to reverse the transaction, or to return the Bored Ape back to me, as the rightful owner.
13. OpenSea never shut down or fixed the security vulnerabilities in their platform after my reporting that my NFT Bored Ape No. 3475 was stolen.
14. The account that currently has the stolen Bored Ape is not frozen by OpenSea. That user is allowed by OpenSea to transact the Bored Ape, without restriction or consequence.
15. OpenSea said they would "investigate" the claim, but never responded to me with any conclusion or resolution.
16. I still have not been given back my NFT Bored Ape. No. 3475



TIMOTHY MCKIMMY

SUBSCRIBED AND SWORN BEFORE ME, on this the 23rd day of May, 2022, to which I certify by my hand and seal of office.



NOTARY PUBLIC, STATE

OF TEXAS

